

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BOARDS OF TRUSTEES OF OHIO
LABORERS' FRINGE BENEFIT
PROGRAMS,

Plaintiffs,

vs.

Civil Action 2:15-cv-2774
Judge Graham
Magistrate Judge King

S&S DIRECTIONAL BORING, LTD.,

Defendant.

REPORT AND RECOMMENDATION

This is an action for unpaid fringe benefit contributions, liquidated damages, and interest allegedly owed certain employee benefits plans pursuant to a collective bargaining agreement. Plaintiffs, the trustees of four trust funds, assert claims under ERISA, 29 U.S.C. § 1132, and the LMRA, 29 U.S.C. § 185. Defendant S&S Directional Boring, Ltd., ("defendant") was served with a summons and a copy of the *Complaint* on September 8, 2015, *see* ECF 3, but has failed to plead or otherwise defend this action. Plaintiff applied to the Clerk for entry of default, *Plaintiffs' Application for Entry of Default against Defendant*, ECF 4, and the Clerk entered defendant's default pursuant to Fed. R. Civ. P. 55(a) on October 28, 2015. *Entry of Default*, ECF 5. This matter is now before the Court on *Plaintiffs' Motion for Default Judgment*, ECF 6, seeking default judgment against the defendant.

Plaintiffs have established that defendant entered into an agreement with a local union affiliated with the Laborers' District Council of Ohio, AFL-CIO, by which defendant agreed to pay contributions to the funds, by the 15th of each month, on behalf of its employees working within the work jurisdiction of the union. See Exhibits A, B, attached to *Plaintiffs' Motion for Default Judgment*. The *Affidavit of Plaintiffs' Contractor Relations Manager*, attached to *Plaintiffs' Motion for Default Judgment* as ECF 6-2, establishes that defendant owes \$39,761.90 in unpaid fringe benefit contributions for the months of August and September 2015 and made late payments totaling \$ 32,664.47 for the months of June and July 2015. *Id.* at ¶ 3; Exhibit C, attached to *Plaintiffs' Motion for Default Judgment*. Plaintiffs are entitled to liquidated damages, interest, and attorney fees in connection with these amounts. See 29 U.S.C. § 1132(g)(2); *Mich. Carpenters Council Health & Welfare Fund v. C.J. Rogers, Inc.*, 933 F.2d 376 (6th Cir. 1991). Plaintiffs have established that defendant owes \$5,920.20 in liquidated damages and interest for the period from June through September 2015. *Plaintiffs' Motion for Default Judgment*, p. 3; *Affidavit of Plaintiffs' Contractor Relations Manager*, ¶ 3; Exhibit C, attached to *Plaintiffs' Motion for Default Judgment*.

Plaintiffs seek an award of attorney's fees in the amount of \$2,167.50, for seven and one-half hours billed at the rate of \$255.00 per hour. *Plaintiffs' Affidavit in Support of Their Motion for Default Judgment*, ¶ 5; Exhibit D, attached to *Plaintiffs' Motion for Default Judgment*. Plaintiffs have provided evidentiary support that

the number of hours billed and the hourly rate charged are reasonable. *Id.*

Plaintiffs are therefore entitled to judgment in the amount of \$45,682.10 in unpaid fringe benefit contributions, liquidated damages, and prejudgment interest, and an award of attorney's fees in the amount of \$2,167.50.

Accordingly, it is **RECOMMENDED** that *Plaintiffs' Motion for Default Judgment*, ECF 6, be **GRANTED**. It is **FURTHER RECOMMENDED** that the Clerk enter judgment against defendant S&S Directional Boring, Ltd., and that plaintiffs Boards of Trustees of the Ohio Laborers' Fringe Benefit Programs have and recover from S&S Directional Boring, Ltd., the sum of \$45,682.10 in unpaid fringe benefit contributions, liquidated damages, and prejudgment interest, and an award of attorney's fees in the amount of \$2,167.50, plus interest from the date of judgment at the rate of one percent (1%) per month.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to

the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Fed'n of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

November 9, 2015

s/Norah McCann King
Norah McCann King
United States Magistrate Judge